REMARKS

Applicant respectfully requests further examination and reconsideration in view of the arguments set forth fully below. Claims 1-43 were previously pending in this Application. Within the Office Action, Claims 1-43 have been rejected. By the above amendments, new Claim 44 has been added. Accordingly, Claims 1-44 are now pending in the application.

Rejections Under 35 U.S.C. § 103

Within the Office Action, Claims 1-43 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2004/0010467 to Hori et al. (hereinafter "Hori") in view of U.S. Patent No. 7,376,386 B2 to Phillips et al. (hereinafter "Phillips"). The Applicant respectfully disagrees.

Hori teaches a content data storage system including a memory card having a memory to store encrypted content data, a license hold unit to store license information, a plurality of authentication data, each storing authentication data that are authenticated by a plurality of public authentication keys and a switch to selectively provide the data from the plurality of authentication data hold units outside of the recording apparatus according to a request external to the memory card. [Hori, Abstract] Hori teaches that an authentication server 12 challenges the authenticity of the user's cellular phone and memory card establishing access for distribution of music data. [Hori, ¶ 0063] Hori further teaches that in response to a distribution request, license server 10 verifies the authenticity of the user's memory card through authentication server 12, and distributes encrypted content data and license thereof corresponding to the music request to the user's cellular phone. [Hori, ¶ 0064, Figure 1] Hori also teaches restricting the number of accesses to the memory card. [Hori, ¶ 0089]

However, as recognized within the Office Action, Hori does not teach storing authentication data on a removable memory wherein the authentication data includes a predetermined level of content access, nor does Hori teach determining the predetermined level of content access. [Office Action, page 3] Furthermore, Hori does not teach downloading the content from the server to the removable memory according to the predetermined level of content access. Indeed, as recognized in the Office Action, if Hori does not teach that the authentication data includes a predetermined level of content access, then it is impossible for Hori to teach downloading the content from the server to the removable memory *according to the predetermined level of content access*. Moreover, Hori does not teach *time stamping* the authentication data, such that the predetermined level of content access is available for a

predetermined amount of time. While Hori teaches time elapses for secret keys and public keys as well as inhibiting usage of certificate keys after an elapse of a predetermined period of time [Hori, Fig. 3, ¶99, ¶100 and ¶115], that is not the same as time stamping the authentication data. For example, because Hori does not include individual time stamps for each set of authentication data, instead only a set period of time (T1) before keys elapse, the keys must both elapse in order and at intervals of T1. [See Hori, Fig. 3, ¶99, ¶100 and ¶115] However, utilizing the time stamps of the present invention, authentication data can be set to elapse in any order (regardless of which authentication data was created first) and at varying time intervals (e.g. T1, T2, T3, etc...). Therefore, Hori does not teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. Accordingly, Hori does not teach the presently claimed invention. As described above, Hori does not teach storing authentication data on a removable memory wherein the authentication data includes a predetermined level of content access, nor to determine the predetermined level of access. Further, as described above, Hori does not teach downloading the content from the server to the removable memory according to the predetermined level of content access. As also described above, Hori does not teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time.

Phillips is directed to systems and methods for distributing content objects to a requester. [Phillips, Abstract] Specifically, Phillips teaches that a user selects a content object destination and authenticates to the selected content object destination such that a list of content objects available to the user are provided based on the authentication ranging from complete access to very limited access. [Phillips, col. 24, lines 13-35] However, Phillips does not teach storing authentication data on a removable memory. Instead, Phillips teaches that a *user* can *input* name and password [authentication information] to determine which content objects defined in the customer list and network list [are] accessible by the requester. [Phillips, col. 8, lines 36-47] Also, Phillips does not teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. Accordingly, Phillips does not teach the presently claimed invention.

Furthermore, there is no motivation to warrant the combination of Hori and Phillips. There is no hint, teaching or suggestion in either of Hori or Phillips to warrant their combination.

This is a classic case of impermissibly using hindsight to make a rejection based on obviousness. The Court of Appeals for the Federal Circuit has stated that "it is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious." In Re Fritch, 972 F.2d, 1260,

1266, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992). As recognized within the Office Action, Hori does not teach storing authentication data on a removable memory wherein the authentication data includes a predetermined level of content access, nor does Hori teach determining the predetermined level of content access. [Office Action, page 3] Within the Office Action, it is stated that

> [i]t would have been obvious for one of ordinary skill in the art at the time the invention was made to have incorporated Phillips's invention within Hori to include authentication data includes a predetermined level of content access." [Office Action, page 3]

It is only with the benefit of the present claims, as a "template" that there is any motivation to combine the content data storage system of Hori with the telecommunication content objects distribution system of Phillips. No such motivation can be found in the teachings of either of the references. To conclude that the combination of Hori and Phillips is obvious, based on the teachings of these references, is to use hindsight based on the teachings of the present invention and to read much more into Hori and Phillips than their actual teachings. This is simply not permissible based on the directive from the Court of Appeals for the Federal Circuit.

It is well settled that to establish a *prima facie* case of obviousness, three basic criteria must be met:

1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
2) there must be a reasonable expectation of success; and
3) the prior art reference, or references, must teach or suggest all the claim limitations. MPEP § 2143.

The burden of establishing a *prima facie* case of obviousness based on the teachings of Hori and Phillips has not been met within the Office Action.

There is no motivation to combine the teachings of Hori and Phillips. As described above, Hori relates to an authentication server 12 that challenges the authenticity of the user's cellular phone and memory card, verifies the user's memory card through authentication server 12, and distributes encrypted content data and license thereof corresponding to the music request to the user's cellular phone. [Hori, ¶ 0063-0064, Figure 1] Specifically, the purpose of Hori is to restrict/track the number of accesses to the memory card "by taking count the number of times content data of, for example, one song, is distributed in distribution carrier 20[;] the copyright

royalty fee [being] induced every time a user receives [the] content data distribution [then] can be collected by distribution carrier 2 in the form of telephone bills ... thus, the royalty fee of the copyright owner can be insured." [Hori, ¶ 0070] In other words, the purpose of the system of Hori is to track the "use" of each piece of content data individually after allowing access to the server through the "all or nothing" authentication process for the purposes of individualized royalty fees. Phillips is only cited because it teaches a content distribution system with an authentication process that is based on broad levels of access (e.g. public, private, etc...) with no individualized tracking. [Phillips, col. 24, lines 13-35] However, there would be no motivation to combine the level based access authentication system of Phillips with the individualized tracking of Hori because, if combined, Hori's individualized tracking would make Phillips's level based access superfluous. This is because the system of Hori can ensure the tracking of royalty fees incurred, regardless of access level. Therefore, there is no need to prevent any user from accessing a level or portion of the content because regardless of what they access, the system of Hori will require them to pay for it if necessary. Accordingly, there is no motivation to combine the teachings of Hori and Phillips.

Further, within the Office Action, the improper combination is justified because it is stated that "[o]ne of ordinary skill in the art would have been [motivated] to do so because it would allow the user [to] select a content object that is in turn provided to the user." [Office Action, page 3] However, the system of Hori already permits a user to select content and then have that content be provided to the user. Therefore, Hori would have no motivation to add something to its system that the system was already capable of. Moreover, the authentication process in Phillips is based on user input, not authentication data stored on a memory card as in Hori. Specifically Phillips states "this can be done by ... receiving a user name and password from the requester." [Phillips, col. 8, lines 36-47] Therefore, a person of ordinary skill in the art of the authentication of a memory device based on authentication data stored on the device would not look to an authentication system based on user inputs of a user name and a password over a user interface. No citation from either Hori or Phillips is provided within the Office Action that comes close to supporting their combination. More is required to justify the combination of two references. Accordingly, the combination of Hori with Phillips is improper and should be withdrawn.

Even if considered proper, the claims are allowable over the teachings of Hori, Phillips and their combination. In contrast to the teachings of Hori, Phillips and their combination, the system for authentication downloading of the presently claimed invention, utilizes a removable memory having a set of authentication data that includes a predetermined level of content access.

A handheld electronic device includes an interface to connect to the Internet when the removable memory is inserted into the handheld electronic device and a connection is formed with a server, using the set of authentication data, the server is able to authenticate the removable memory automatically without the user interfacing personally with the server. The server authenticates downloading to the removable memory in the handheld electronic device by reading the set of authentication data on the removable memory, and downloading the desired content to the removable memory. Removable memory is issued to the user having a pre-assigned set of authentication data tailored to the needs of the user and the authentication level desired by the user. [Present Specification, page 5, lines 6-9] As an example, in this embodiment, free content results in a free removable memory, while content normally sold for a fee results in a fee for the removable memory. [Present Specification, page 5, lines 9-12] By using a subscription identification number, a server is able to identify what content the user is authorized to download from the server. [Present Specification, page 5, lines 13-19] In contrast to both Hori and Phillips, the present invention includes time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. Further, because both Hori and Phillips fail to teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time, neither can their combination. Accordingly, neither Hori, Phillips nor their combination teach the presently claimed invention. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access.

The independent Claim 1 is directed to a method of downloading content from a server to an electronic device. The method of Claim 1 comprises storing authentication data on a removable memory, wherein the authentication data includes a predetermined level of content access, accessing the server with the electronic device, authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access and downloading the content from the server to the removable memory according to the predetermined level of content access. As described above, the combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time

stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at least these reasons, the independent Claim 1 is allowable over Hori, Phillips and their combination.

Claims 2-9 are all dependent on the independent Claim 1. As described above, the independent Claim 1 is allowable over the teachings of Hori, Phillips and their combination. Accordingly, Claims 2-9 are all also allowable as being dependent on an allowable base claim.

The independent Claim 10 is directed to a system for downloading content from a server to an electronic device. The system of Claim 10 comprises means for storing authentication data on a removable memory, wherein the authentication data includes a predetermined level of content access, further wherein the authentication data is preinstalled on the removable memory, means for receiving the removable memory in the electronic device, means for accessing the server with the electronic device, means for authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access and means for downloading the content from the server to the removable memory according to the predetermined level of content access. As described above, the combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at least these reasons, the independent Claim 10 is allowable over Hori, Phillips and their combination.

Claims 11-18 are all dependent on the independent Claim 10. As described above, the independent Claim 10 is allowable over the teachings of Hori, Phillips and their combination. Accordingly, Claims 11-18 are all also allowable as being dependent on an allowable base claim.

The independent Claim 19 is directed to a system for downloading content. The system of Claim 19 comprises a removable memory, the removable memory including authentication data, the authentication data including a predetermined level of content access, an electronic device configured to receive the removable memory and a server, wherein when the electronic device accesses the server, the removable memory is authenticated by reading the authentication data from the removable memory and determining the predetermined level of content access, and further wherein once authenticated, content according to the predetermined level of content access is downloaded from the server to the electronic device. As described above, the

combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at least these reasons, the independent Claim 19 is allowable over Hori, Phillips and their combination.

Claims 20-27 are all dependent on the independent Claim 19. As described above, the independent Claim 19 is allowable over the teachings of Hori, Phillips and their combination. Accordingly, Claims 20-27 are all also allowable as being dependent on an allowable base claim.

The independent Claim 28 is directed to an electronic device for downloading. The electronic device of Claim 28 comprises a memory slot configured to receive a removable memory, wherein the removable memory includes authentication data, the authentication data including a predetermined level of content access, and a communications interface configured for coupling to a server, wherein when the electronic device accesses the server through the communications interface, the removable memory is authenticated by reading the authentication data from the removable memory to determine the predetermined level of content access, further wherein content according to the predetermined level of content access is downloaded. As described above, the combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at least these reasons, the independent Claim 28 is allowable over Hori, Phillips and their combination.

Claims 29-35 are all dependent on the independent Claim 28. As described above, the independent Claim 28 is allowable over the teachings of Hori, Phillips and their combination. Accordingly, Claims 29-35 are all also allowable as being dependent on an allowable base claim.

The independent Claim 36 is directed to a removable memory for downloading. The removable memory of Claim 36 comprises authentication data, the authentication data including a predetermined level of content access and a communications interface configured for coupling to a server, wherein when an electronic device accesses the server through the communications

interface, the removable memory is authenticated by reading the authentication data from the removable memory to determine the predetermined level of content access, further wherein the electronic device includes a memory slot configured to receive the removable memory, and further wherein content according to the predetermined level of content access is downloaded, further wherein the predetermined level of content access determines how much of the content on the server is available for download. As described above, the combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at least these reasons, the independent Claim 36 is allowable over Hori, Phillips and their combination.

Claims 37-43 are all dependent on the independent Claim 36. As described above, the independent Claim 36 is allowable over the teachings of Hori, Phillips and their combination. Accordingly, Claims 37-43 are all also allowable as being dependent on an allowable base claim.

New Claim

The independent Claim 44 is directed to a method of downloading content from a server to an electronic device. The method of Claim 44 comprising storing authentication data on a removable memory, wherein the authentication data includes a predetermined level of content access, accessing the server with the electronic device, authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access and downloading the content from the server to the removable memory according to the predetermined level of content access, wherein the authentication data is time stamped, such that the predetermined level of content access is available for a predetermined amount of time. As described above, the combination of Hori and Phillips is improper. As also described above, neither Hori, Phillips nor their combination teach storing authentication data on a removable memory. Further, neither Hori, Phillips nor their combination teach authenticating the removable memory by reading the authentication data from the removable memory to determine the predetermined level of content access. As further described above, neither Hori, Phillips nor their combination teach time stamping the authentication data, such that the predetermined level of content access is available for a predetermined amount of time. For at

least these reasons, the independent Claim 44 is allowable over Hori, Phillips and their combination.

For the reasons given above, the applicant respectfully submits that the claims are now in a condition for allowance, and allowance at an early date would be appreciated. Should the Examiner have any questions or comments, they are encouraged to call the undersigned at (408) 530-9700 to discuss the same so that any outstanding issues can be expeditiously resolved.

Respectfully submitted,
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